(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-BPO, LLC

DATE: SEPT. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and consulting business, seeks to permanently employ the Beneficiary as a business/market research analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This classification allows a U.S. employer to sponsor a member of the professions holding an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition, concluding that the Petitioner had not established that it had the continuing ability to pay the Beneficiary the proffered wage beginning on the priority date of the petition. The matter is now before us on appeal. Upon *de novo* review, we will summarily dismiss the appeal as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

On July 21, 2016, we sent the Petitioner a notice of intent to dismiss the appeal (NOID) with a copy to counsel of record. The NOID stated, in part:

> The ETA Form 9089 in the record states that the Beneficiary has the following employment history:
>
> - As a Business/Market Research Analyst for your organization as of September 12, 2012;
> - As a Controller for [redacted] in [redacted] Illinois from November 5, 2007 until August 27, 2010;
> - As a Marketing Manager and IT [Engineer] for [redacted] from January 1, 2005 until September 25, 2007.
>
> The record contains an experience letter from [redacted] and [redacted] The letter from [redacted] indicates that the Beneficiary worked there as a marketing manager and as an IT engineer from January 1, 2005 to September 25, 2007. Overseas verification confirmed that the Beneficiary was employed in [redacted] which is a mining and geology company also known as [redacted] from July 2005 to January 2006, and by [redacted] from June to October 2007. This employment conflicts with the Beneficiary's

alleged experience at [redacted] and appears to be a willful misrepresentation of a material fact.

Willful misrepresentation of a material fact consists of a false representation of a material fact made with knowledge of its falsity. *Toribio-Chavez v. Holder*, 611 F.3d 57, 63 (1st Cir. 2010); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 (BIA 1975). A misrepresentation is material if it "had a natural tendency to influence" the official decision. *Toribio-Chavez*, 611 F.3d at 63 (citing *Kungys v. United States*, 485 U.S. 759, 772 (1988)).

The record contains substantial evidence that, if unrebutted, indicates a willful misrepresentation of the Beneficiary's qualifying experience on the accompanying labor certification. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Therefore, we request that you submit independent, objective evidence to overcome these discrepancies, including but not limited to, experience letters from the Beneficiary's former employers in Mongolia, stating his job duties and dates of employment. Also, please provide an explanation to resolve the concerns we have regarding the letter from [redacted] Without an explanation, the divergent experience claimed appears, and may be, inaccurate or fraudulent.

The letter from [redacted] states that the Beneficiary worked there from November 5, 2007 to August 27, 2010. Due to the other discrepancies in the record noted above, we question whether this is an official letter from [redacted] Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Therefore, we request that you submit independent, objective evidence to substantiate the Beneficiary's employment with [redacted] such as Forms W-2 or pay records.

Please also submit your organization's 2014 and 2015 federal tax returns and the IRS Form 941, Quarterly Federal Income Tax Return, for all quarters of 2014, 2015 and the first two quarters of 2016. Please also submit the Beneficiary's 2014 and 2015 Forms W-2 as evidence of your continuing ability to pay the proffered wage and to demonstrate the need for a full-time Business/Market Research Analyst.

Based in part on this derogatory information, we intend to dismiss your case. You may submit additional evidence to rebut this information. 8 C.F.R. § 103.2(b)(16)(i).

The NOID allowed the Petitioner 33 days in which to submit a response. We informed the Petitioner that, if it did not respond to the NOID, we may dismiss the appeal.

As of the date of this decision, the Petitioner has not responded to the NOID. Not submitting requested evidence that precludes a material line of inquiry is grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Since the Petitioner did not respond to the NOID, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

ORDER: The appeal is summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13).

Cite as *Matter of A-BPO, LLC*, ID# 84665 (AAO Sept. 30, 2016)